

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NATE MCMURRAY, a Candidate for Congress and as
an Enrolled Democratic Party Voter In Erie County,
PAULINE GRABEKI, as an Enrolled Republican Party
Voter in Erie County, and RONALD COONS, as an
Enrolled Democratic Party Voter in Erie County,
individually and on behalf of a Class of Erie County
Voters Similarly Situated,

Plaintiffs,

Case No.: 1:20-cv-00689-LJV

– against –

RALPH M. MOHR and JEREMY J. ZELLNER,
individually and as COMMISSIONERS of the ERIE
COUNTY BOARD OF ELECTIONS, and the ERIE
COUNTY BOARD OF ELECTIONS,

Defendants.

DECLARATION OF DANIEL A. SPITZER

Daniel A. Spitzer, under penalty of perjury and pursuant to 28 U.S.C. § 1746,
declares that the following is true and correct:

1. I am a partner at Hodgson Russ LLP, counsel for Defendants Ralph M. Mohr, Jeremy J. Zellner, and the Erie County Board of Elections (“Defendants”).
2. I make this declaration in support of Defendants’ motion to dismiss the First Amended Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). In sum, the First Amended Complaint fails to allege a constitutional violation against Defendants. Given the absence of a federal question, the Court should decline to exercise supplement jurisdiction over Plaintiffs’ remaining claims vaguely alleging a violation of the New

York State Constitution.

3. Plaintiffs filed the original complaint in this action on June 9, 2020 (without filing a summons or serving the Complaint). *See* Dkt. 1. A copy of the original complaint is attached hereto as **Exhibit A**.

4. Plaintiffs did not file correct summonses until June 15, 2020, and the District Court issued them a day later. *See* Dkts. 21, 22.

5. In sum, the original complaint alleges Defendants insufficiently notified the public of the locations for early voting for the June 23, 2020 special and primary elections in Erie County. Early voting took place from June 13, 2020 through June 21, 2020. *See* N.Y. Board of Elections, *available at* <https://www.elections.ny.gov/> (last visited July 13 2020). The original complaint alleges state and federal Constitutional violations.

6. The same day they filed the Complaint, Plaintiffs moved on an expedited basis for a temporary restraining order and preliminary injunction. *See* Dkt. 3. Plaintiffs sought a temporary restraining order and preliminary injunction compelling Appellees to: (1) post early voting locations for the June 23 elections on the Erie County Board of Elections' (the "BOE's") website; (2) purchase advertisements for early voting for the June 23 elections in every newspaper in Erie County; and, (3) mail notices of all early voting locations for the June 23 elections to all voters. The original complaint sought identical relief.

7. Defendants opposed the motion and, on June 11, 2020, the Court issued a Decision and Order, denying the motion. *See* DSkt. 12. A copy of the Decision and Order is attached hereto as **Exhibit B**.

8. While that motion was pending and mere hours before the Court issued its Decision and Order on June 11, 2020, Plaintiffs filed the First Amended Complaint. *See* Dkt. 12. A copy of the First Amended Complaint is attached hereto as **Exhibit C**.

9. The First Amended Complaint includes an additional claim alleging an equal protection violation and seeks an additional request for relief: a permanent injunction prohibiting Defendants from failing to provide adequate notification for early voting in the November 2020 general election.

Dated: July 13, 2020

s/ Daniel A. Spitzer

Daniel A. Spitzer